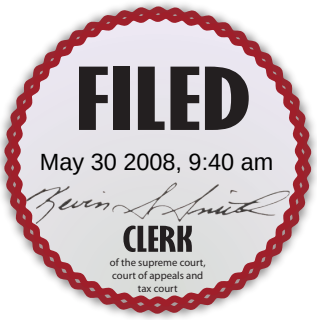

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IN THE
COURT OF APPEALS OF INDIANA

T.S.,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 49A05-0710-JV-572
	)	
MARION COUNTY DEPARTMENT OF CHILD SERVICES and CHILD ADVOCATES, INC.,	)	
	)	
Appellees.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
Cause No. 49D09-0705-JT-19347

May 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Tiwanna S. ("Mother") appeals the involuntary termination of her parental rights to her children, H.S. and A.S. Mother raises one issue on appeal, which we restate as whether the juvenile court's judgment terminating Mother's parental rights to the children is supported by clear and convincing evidence.

We affirm.

FACTS AND PROCEDURAL HISTORY

The facts most favorable to the judgment reveal that Mother is the biological mother of H.S., born on March 31, 2005, and of A.S., born on March 22, 2006.[1] On September 22, 2005, Mother took then six-month-old H.S. to Methodist Hospital in Indianapolis. Upon his arrival at Methodist Hospital, H.S., who had been born a healthy, normal child, was near death. He had a skull fracture and brain injury, he was not breathing on his own, and he was unable to move. H.S. also had rib fractures that were less than two weeks old. On that same day, Dr. Laskey, a consultant physician on the child protection team at Riley Hospital, was called to examine H.S. because H.S.'s injuries indicated abuse or neglect. Dr. Laskey interviewed both parents together that day at the hospital. Neither parent could provide a plausible explanation for how H.S. had sustained his injuries.

On September 26, 2005, the Marion County Department of Child Services ("MCDCS") filed a petition alleging H.S. was a child in need of services ("CHINS"). The petition alleged H.S. was in need of services because his "physical or mental

[1] The children's biological father, Hamadou S., did not participate in the proceedings below and is not a party to this appeal.

condition is seriously impaired or seriously endangered[,]" that at the time that H.S. sustained his injuries, Mother and Father had been the "main caregivers[,]" and that "the parents had no reasonable explanations for the child's injuries." Ex., Vol. 1, pp. 10-11. The CHINS petition also cited Mother's history with the MCDCS for physically abusing her older children.

On January 5, 2006, a hearing on the CHINS petition was held, after which the juvenile court found H.S. to be a CHINS. The court proceeded to disposition on February 2, 2006, and ordered H.S. removed from Mother's care. The juvenile court also entered a Participation Decree ordering Mother to participate in various services and to accomplish various tasks in order to achieve reunification with H.S. In so doing, the court ordered Mother to, among other things: (1) secure and maintain a legal source of income and appropriate housing to support the household members, (2) successfully complete a parenting assessment and all resulting recommendations, including home-based counseling or other counseling, (3) complete a psychological evaluation, (4) complete a drug and alcohol assessment, (5) complete age-appropriate parenting classes and be able to successfully demonstrate the skills learned in class, (6) successfully participate in and complete anger control classes, (7) participate in a program addressing issues of domestic violence as referred by the case manager, and (8) consistently visit with H.S. as recommended by the counselor or caseworker.

On March 24, 2006, two days after A.S. was born, a CHINS petition was filed as to A.S. The petition alleged that A.S. was a CHINS because Mother:

> cannot provide the child with a safe home environment, free from abuse and neglect. [Mother] is currently involved in an open CHINS case with

> MCDCS regarding an older child, [H.S.] and allegations of severe physical abuse, which resulted in the child sustaining numerous life threatening and devastating injuries. [Mother] has not completed the rehabilitative services ordered by the Court . . . which are designed to ensure the health, safety, and welfare of children in her care. [Mother] has further extensive history with MCDCS involving other children who have at this time been adopted, all of which involve allegations of physical abuse.

Id. at 50. Notwithstanding Mother's denial of the allegations contained in the CHINS petition, on August 30, 2006, the juvenile court found A.S. to be a CHINS and removed her from Mother's care. The juvenile court further ordered Mother to complete the services and programs ordered under H.S.'s case.

On May 10, 2007, the MCDCS filed a petition to terminate Mother's parental rights to both children. Following a two-day trial, commencing on September 13, 2007, and concluding on September 18, 2007, the juvenile court entered its judgment terminating Mother's parental rights to H.S. and A.S on September 24, 2007. This appeal ensued.

DISCUSSION AND DECISION

Mother alleges the MCDCS failed to prove each element set forth in Indiana Code Section 31-35-2-4(b)(2) by clear and convincing evidence, as is required for the involuntary termination of parental rights. This Court has long had a highly deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). Thus, when reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. In re D.D., 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only

the evidence and reasonable inferences therefrom that are most favorable to the judgment. Id.

Here, the juvenile court made specific findings in terminating Mother's parental rights. Where the juvenile court enters specific findings of fact, we apply a two-tiered standard of review. First, we must determine whether the evidence supports the findings. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). Secondly, we determine whether the findings support the judgment. Id. In deference to the juvenile court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. D.D., 804 N.E.2d at 264. A judgment is clearly erroneous only if the findings do not support the court's conclusions or the conclusions do not support the judgment thereon. Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996).

"The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. However, the juvenile court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. K.S., 750 N.E.2d at 837. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id. at 836.

In order to terminate a parent-child relationship, the State is required to allege and prove that:

> (A) one (1) of the following exists:
>
> > (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
>
> * * *
>
> (B) there is a reasonable probability that:
>
> > (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
> >
> > (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
>
> (C) termination is in the best interests of the child; and
>
> (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). The State must establish each of these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992). Mother's sole allegation on appeal is that the MCDCS failed to prove by clear and convincing evidence that there is a reasonable probability the conditions resulting in the children's removal from her care will not be remedied, and that continuation of the parent-child relationship poses a threat to the children's well being. In support of this allegation, Mother claims that she "has completed all services to which she was referred[,]" and that "[b]ecause Mother was not permitted to participate in home-based counseling, there is no way to determine whether she had benefited from the services in which she had already participated." Br. of Appellant pp. 12, 16.

Additionally, Mother argues, "There is no finding . . . that Mother caused H.S.'s injuries or that she had an opportunity to prevent them." Id. at 14. Thus, Mother concludes there is insufficient evidence supporting the juvenile court's judgment.

Initially, we observe that Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, only one of the two requirements of subsection (B) must be found by clear and convincing evidence. L.S., 717 N.E.2d at 209. We will first review whether the juvenile court's finding that there is a reasonable probability the conditions resulting in the children's removal from Mother's care will not be remedied is supported by clear and convincing evidence.

When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the juvenile court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. The court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the children. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). The MCDCS is not required to rule out all possibilities of change; rather, it need establish "only that there is a reasonable probability that the parent's behavior will not change." In re Kay. L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In determining that there is a reasonable probability Mother's behavior will not change, and thus the conditions resulting in the children's removal will not be remedied, the juvenile court made the following pertinent findings:

> 15. Services were ordered for Mother under a Participation Decree in February of 2006. A parenting assessment was completed and Phase I recommendations included Mother having a psychiatric evaluation, create a safety plan, comply with pending criminal charges, complete parenting classes, maintain safe housing and obtain a stable source of income.
>
> * * *
>
> 17. Once Phase I services were completed, Phase II service was to be home[-]based counseling . . . [which] was never started due to Phase I services being ineffective.
>
> 18. Information obtained during the parenting assessment disclosed that Mother's housing history was unstable, including periods of homelessness. She worked infrequently, her longest job lasting just three months. Prior to the assessment, Mother's last job consisted of being a Salvation Army bell ringer, which job she quit after working one day. Mother currently has a two bedroom, public subsidized home and she has temporary employment.
>
> 19. Domestic violence was present in her relationships with the two fathers of her first three children. Mother's violent actions also played a part in having her first three children becoming children in need of services and eventually adopted out after hitting her four[-]year[-]old son, causing the need for stitches. Mother was convicted of a D Felony Battery as a result of the incident. Mother did complete a domestic violence class [as] part of her services in the CHINS action.
>
> 20. The mental status exam, as part of the parenting assessment, resulted in a finding that Mother's affect was blunted, her reality was distorted and she had a separation of her thoughts, all indicative of mental health problems.
>
> 21. The assessment showed no problems with drugs or alcohol . . . but concerns existed regarding Mother's problem solving and decision making abilities.

* * *

23. Licensed clinical psychologist, Dr. Mary Papandria, performed [M]other's psychiatric evaluation on May 30, 2006. The evaluation consisted of four parts, a clinical interview, an intelligence quotient, the Rorschach "inkblot" test, and the Milan Inventory.

24. Mother scored a 78 in her IQ test, which is in the low average to mild mental retardation range.

25. The Rorschach test was not completed. When it was attempted, Mother could not follow the directions, decompensated, and the test was stopped at the point when Mother became enraged.

* * *

27. Dr. Papandria's diagnostic impression was that Mother was suffering from Major Depression Disorder, recurrent and sever[e], Paranoia, Intermittent Explosive Disorder and low average to mild mental retardation intelligence. Psychotic disorders would have to be ruled out.

28. Dr. Papandria recommended that she receive counseling or psychotherapy weekly for more than a year, and see a psychiatrist for possible medications. Without this, Mother's ability to parent safely and appropriately would be a major concern.

29. Anthony Gray provided Mother with twelve therapy sessions between September 29, 2006 and April 18, 2007. Mother attended the sessions although four were missed and had to be made up. At the end of the twelve sessions, Mother had made no real progress. Mr. Gray still had concerns about the lack of insight and coping skills Mother possessed which affects her daily functioning.

30. Mr. Gray also was concerned that Mother had failed to obtain medications and appeared defensive when she was questioned about it.

31. The family case manager, Cara Olson, also spoke with Mother about the importance of her taking medications for mental health issues but Mother did not believe in taking medications and further did not believe she need[ed] medications.

* * *

> 36. Mother has not followed up on obtaining medications that could help with her mental health issues. Mother did not progress with therapy alone. Mother's affect in court during trial seemed inappropriate at times and her testimony was at times hard to follow and unresponsive.
>
> 37. Given Mother's MCDCS history and mental health issues, uncured since the original CHINS I action was filed almost two years ago, she cannot provide the children with a safe environment. It is highly doubtful that Mother has the capacity to obtain the skills necessary to cope with [H.S.'s] extensive special needs.

Appellant's App. pp. 9-11. Based on these findings, the juvenile court concluded, there is a "reasonable probability that the conditions that resulted in the children's removal and placement outside the parent[s]' home will not be remedied." Id. at 12. Our review of the record reveals that there is clear and convincing evidence supporting the juvenile court's findings set forth above. These findings, in turn, support the court's ultimate decision to terminate Mother's parental rights to H.S. and A.S.

By the time of the termination hearing, Mother had failed to complete court-ordered services and therefore reunification could not be recommended by any of the caseworkers or healthcare professionals involved in the case. Mother's therapist, Anthony Gray, testified that he continued to have concerns regarding Mother's mental health. Mr. Gray stated that throughout counseling, Mother continued to lack the ability "of taking any responsibility" and of "insight" into "how things all fit together . . . . [H]ow her behaviors affected where she was at that time." Tr. at 86. Mr. Gray also testified that while he discussed with Mother, on at least two occasions, Dr. Papandria's recommendation that she be seen by a psychiatrist as well as the potential use of, and benefit from, psychotropic medications, Mother refused to comply and became

"defensive" and "avoidant." Id. Finally, Mr. Gray stated that due to Mother's general lack of progress in therapy, he was unable to recommend that the DCS continue to provide for additional therapy sessions.

Dr. Papandria, who conducted " a very comprehensive clinical interview" with Mother, in addition to a mental status examination, an IQ test, and two measures of personality, also could not recommend reunification of the family. Id. at 56. Dr. Papandria testified that, based on her observations, she "felt that [Mother] needed really consistent psychological treatment, which would include counseling or psychotherapy, at least once a week. For at least one to two years. Combined with being on medication, psycho-tropic medications." Id. at 66. When questioned as to why she felt Mother needed psychotropic medications, Dr. Papandria responded:

> [T]he symptoms that [Mother] had were so severe and what I know from my experience is that people cannot benefit fully from psychotherapy if these other[] symptoms are so severe. It's like having cancer. I mean you can't benefit from cancer treatment if you don't take the chemotherapy. So you're not gonna beat the disease without the medication. And so in her case, now I don't always feel that people need medication. I think sometimes therapy alone is enough. But in [Mother's] case, the fact that the depression was so severe that she was looking psychotic, made me, you know, from my experience, I know that people can't fully benefit from therapy without being on medication to kind of . . . calm those major symptoms down first.

Id. at 67. Dr. Papandria later testified that despite Mother's participation in therapy with Mr. Gray, based upon her diagnosis and review of the psychotherapy notes, she still had concerns about Mother's ability to care for the children, including concerns as to how the stress of caring for them could potentially cause Mother to be angry and a danger to her children. In so doing, Dr. Papandria stated, "[I]t look[s] like very little change,

significant change[,] had occurred . . . . [Mother] continued to lack insight and be concrete. She continued to present with some odd, odd behaviors. Consistent with . . . a psychotic type condition." Id. at 77.

Social Worker Terrance Lovejoy ("Lovejoy") conducted Mother's parenting assessment. Lovejoy testified that he was concerned with Mother's denial of having problems with anger management. He further stated that due to Mother's history with Child Protective Services, her mental health issues, the significant injuries to the children in her care, and her history of first denying and then later admitting to hurting her older children, his prognosis for family reunification was poor. Finally, the MCDCS caseworker testified that termination was in the children's best interests. She further stated that she had never been able to recommend reunification during the CHINS proceedings due to Mother's "homeless[ness][,]" her failure to obtain a job to support herself and her family, and her "unaddressed mental health issues[.]" Id. at 177.

In sum, Mother has failed either to complete or to benefit from court-ordered services. Mother did not complete one to two years of weekly therapy as recommended, but instead participated in only twelve sessions with Mr. Gray before he discontinued the therapy for lack of progress. Mother also refused to meet with a psychiatrist, denied that she had anger management problems, and refused to take any medications to help treat her recurrent and severe depression, paranoia and intermittent explosive disorder, despite repeated requests to do so by the caseworkers and therapists involved in her case. Because of her failure to progress in therapy, Mother was also unable to participate in home-based counseling, an essential pre-requisite to reunification of the family in this

case. Additionally, Mother failed to obtain and maintain stable housing and employment throughout the entire CHINS proceedings until approximately three months prior to the termination hearing.

We have previously held that "[a] pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change." Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied. While we recognize that Mother did go through the motions of completing several of the court-ordered services, including parenting classes, anger management classes, visitation, and some therapy sessions with Mr. Gray, it is clear from the record that Mother was unable to successfully demonstrate that she had benefited from those services. "Where there are only temporary improvements and the patterns of conduct shows no overall progress, the court might reasonably find that, under the circumstances, the problematic situation will not improve." In re D.L.W., 485 N.E.2d 139, 143 (Ind. Ct. App. 1985).

Based on the foregoing, we cannot say that the juvenile court committed clear error when it determined that there is a reasonable probability that the conditions resulting in the children's removal from Mother's care will not be remedied.[2] We will reverse a termination of parental rights "only upon a showing of 'clear error' -- that which leaves us with a definite and firm conviction that a mistake has been made." In re

[2] Having concluded the juvenile court's finding regarding the remedy of conditions is supported by clear and convincing evidence, we need not consider whether the MCDCS proved by clear and convincing evidence that continuation of the parent-child relationship poses a threat to the children's well being. L.S., 717 N.E.2d at 209.

A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (citing Egly, 592 N.E.2d at 1235). We find no such error here. Accordingly, the juvenile court's judgment terminating Mother's parental rights to H.S. and A.S. is hereby affirmed.

Affirmed.

DARDEN, J., and BROWN, J., concur.